

**ORIGINAL****FILED**

1 NORTH LAS VEGAS CITY ATTORNEY

2 Micaela C. Rustia Moore

3 Cal. Bar No. 243484

4 Nev. Bar No. 9676

5 2250 Las Vegas Blvd. North, Suite 810

6 North Las Vegas, Nevada 89030

(702) 633-1050

7 moorem@cityofnorthlasvegas.com8 *Attorneys for Defendants ALEXANDER PEREZ and MARY D. SCARFF*9 **UNITED STATES DISTRICT COURT**10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 DARREN CHAKER,

12 Plaintiff,

13 v.

14 LEESA FAZAL, in her personal capacity  
 15 and in her official capacity as an  
 16 employee with the Attorney General of  
 17 the State of Nevada, ADAM PAUL  
 18 LEXALT, in his official capacity as the  
 19 Attorney General for the State of  
 20 Nevada, CITY OF NORTH LAS  
 21 VEGAS, ALEXANDER PEREZ, in his  
 22 official capacity as the Chief of Police of  
 23 the North Las Vegas Police Department,  
 24 MARY D. SCARFF, in her official  
 25 capacity as Police Records Supervisor  
 26 for the North Las Vegas Police  
 27 Department, DAVID J. SULTZBAUGH  
 28 in his official capacity as Chief of the  
 United States Probation Officer,  
 ELIZABETH SIMONS, in her individual  
 and official capacity as an employee of  
 the United States Probation Office,  
 SEAN QUINTA, in his individual and  
 official capacity as an employee of the

**FILED**

JUN 8 2017

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *m/c* DEPUTY

Case No. 16cv1872 CAB BLM

**Hearing Date: July 17, 2017****Hearing Time:****Ctrm: 4C****Hon. CATHY ANN BENCIVENGO**

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 DEFENDANTS ALEXANDER  
 PEREZ' AND MARY D. SCARFF'S  
 MOTION TO DISMISS  
 PLAINTIFF'S COMPLAINT FOR  
 DAMAGES PURSUANT TO  
 FED.R.CIV.P. 12(b)(2)-(3), (b)(5)-(6)**

**[PER CHAMBERS RULES, NO  
 ORAL ARGUMENT UNLESS  
 SEPARATELY ORDERED BY THE  
 COURT]**

Case No. 16cv1872 CAB BLM

1 United States Probation Office,  
2 CARLOS HERNANDEZ, in his  
3 individual and official capacity as an  
4 employee of the United States Probation  
Office, Does 1-50,

5 Defendants.  
6

7 Defendants ALEXANDER PEREZ and MARY D. SCARFF present the  
8 following Memorandum of Points and Authorities in support of their Motion to  
9 Dismiss Plaintiff's Complaint for Damages Pursuant to Fed. R. Civ. P. 12(b)(2)-  
10 (3), (b)(5)-(6).

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND .....	1
III.	ARGUMENT .....	3
A.	This Court has no personal jurisdiction over Defendants Perez and Scarff. ....	3
1.	This Court lacks general jurisdiction over Defendants Perez and Scarff because neither of them are domiciled in California and neither has continuous or systematic contacts with California. ....	4
2.	This Court Lacks Specific Jurisdiction Over Defendants Perez and Scarff Because Neither Had Contact With the Forum State or Directed Activities Toward the Forum State. ....	5
i.	Defendants Perez and Scarff did not Perform any Act or Consummate Any Transaction Within the Forum or Otherwise Purposefully Avail Themselves of the Privileges of Conducting Activities in the Forum. ....	6
ii.	Defendants Have not Conducted Any Forum-Related Activities, and the Exercise of Jurisdiction would be Unreasonable. ....	7
B.	Venue is Not Proper. ....	8
C.	Plaintiff Failed to Timely Serve his Complaint. ....	9
D.	Plaintiff's Claims are Barred by the Statute of Limitations. ....	11
IV.	CONCLUSION .....	13

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page No.</u>
<i>Bancroft &amp; Masters, Inc. v. Augusta Nat. Inc.</i> ,	
223 F.3d 1082 (9th Cir. 2000) .....	4, 5, 6
<i>Bell Atlantic Corp. v. Twombly</i> ,	
550 U.S. 544, 127 S. Ct. 1955 (2007) .....	11
<i>Boschetto v. Hansing</i> ,	
539 F.3d 1011 (9th Cir. 2008) .....	6
<i>Brayton Purcell LLP v. Recordon &amp; Recordon</i> ,	
606 F.3d 1124 (9th Cir.2010) .....	3
<i>CollegeSource, Inc. v. AcademyOne, Inc.</i> ,	
653 F.3d 1066 (9th Cir. 2011).....	3, 6, 7
<i>Dole Food Co. v. Watts</i> ,	
303 F.3d 1104 (9th Cir. 2002) .....	7
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> ,	
564 U.S. 915 (U.S. 2011) .....	5
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> ,	
466 U.S. 408 (1984) .....	4,5
<i>Kimes v. Stone</i> ,	
84 F.3d 1121 (9th Cir. 1996) .....	12
<i>Lisa McConnell, Inc. v. Idearc, Inc.</i> ,	
No. 09-CV-00061-IEG(AJB),	
2010 WL 364172 (S.D. Cal. Jan. 22, 2010) .....	4
<i>Macpherson v. United States</i> ,	
No. 3:15-CV-0769-BEN-AGS,	
2017 WL 766722 (S.D. Cal. Feb. 28, 2017) .....	10

1	<i>Maldonado v. Harris,</i>	
2	370 F.3d 945 (9th Cir.2004) .....	12
3	<i>Mireskandari v. Daily Mail &amp; Gen. Trust PLC,</i>	
4	No. CV1202943MMMSSX,	
5	2013 WL 12114762 (C.D. Cal. Oct. 8, 2013) .....	12
6	<i>Phillips v. Hernandez,</i>	
7	No. 12-CV-748-MMA WMC,	
8	2012 WL 5185848 (S.D. Cal. Oct. 18, 2012) .....	6
9	<i>Republic Int'l Corp. v. Amco Eng'rs, Inc.,</i>	
10	516 F.2d 161 (9th Cir. 1976) .....	4
11	<i>Scott v. Breeland,</i>	
12	792 F.2d 925 (9 <sup>th</sup> Cir. 1986) .....	3
13	<i>Silva v. Gonzales,</i>	
14	No. 3:13-CV-1587-CAB-KSC,	
15	2014 WL 12663140 (S.D. Cal. May 23, 2014) .....	5, 8
16	<i>TV Ears, Inc. v. SYK Grp., LLC,</i>	
17	No. 16CV867-GPC(WVG),	
18	2016 WL 6248539 (S.D. Cal. Oct. 26, 2016) (slip copy) .....	3, 4
19	<i>Threlkeld v. Tucker,</i>	
20	496 F.2d 1101 (9th Cir. 1974) .....	4
21	<i>Wade v. Ratella,</i>	
22	407 F. Supp. 2d 1196 (S.D. Cal. 2005) .....	12
23	<i>Walden v. Riore,</i>	
24	134 S. Ct. 1115 (2014) .....	5
25	<i>Weaver v. Johnson &amp; Johnson, Ethicon, Inc.,</i>	
26	No. 16CV00257GPCBGS,	
27	2016 WL 1668749 (S.D. Cal. Apr. 27, 2016) .....	5

*Vedachalam v. Tata Am. Int'l Corp.*,

No. C 06-0963 VRW,

2010 WL 11484815 (N.D. Cal. Feb. 4, 2010) .....11

*Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*,

433 F.3d 1199 (9th Cir. 2006) .....4

**United States Code**

42 U.S.C. § 1983 .....11, 12

28 U.S.C. § 1391(b) .....8, 9

28 U.S.C. § 1406(a) .....9

**Other**

Cal. Civ. Proc. § 335.1 (West Supp.2004)).

Fed. R. Civ. P. 4(m) .....1, 10, 11

Fed. R. Civ. P. 12(b)(2) .....1, 3, 8

Fed. R. Civ. P. 12(b)(3) .....1, 8

Fed. R. Civ. P. 12(b)(5) .....1, 10

Fed. R. Civ. P. 12(b)(6) .....1, 11

# MEMORANDUM OF POINTS AND AUTHORITIES

## I.

### INTRODUCTION

Plaintiff Darren Chaker ("Plaintiff") filed a Complaint against the City of North Las Vegas Police Department's Police Chief Alexander Perez ("Defendant Perez"), the City of North Las Vegas Police Department Custodian of Records Mary D. Scarff ("Defendant Scarff") and several other defendants on July 22, 2016. Plaintiff filed this sealed action in the United States District Court for the Southern District of California; however, this Court lacks personal jurisdiction over Defendants Perez and Scarff, and this is the improper venue for any action against them arising out of Plaintiff's allegations. Further, this action was not served within the required time period under Fed. R. Civ. P. 4(m), and there is no good cause as to why the action was served so far beyond the required time. Finally, this action is barred by the statute of limitations. For these reasons, Plaintiff's Complaint against Defendants Perez and Scarff must be dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(2), (b)(3), (b)(5), and (b)(6).

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed his meandering 87-page Complaint on July 22, 2016, opening this lawsuit as a sealed case.<sup>1</sup> While much of the Complaint is muddled, several facts about this lawsuit are exceedingly clear.

First, Plaintiff did not serve Defendant Perez and Defendant Scarff with the Complaint until April 10, 2017.<sup>2</sup> Plaintiff did not provide Defendants any reason for his delay in service.

---

<sup>1</sup> Defendants are unaware of any motion to file the case as a sealed case or why this case is sealed.

1 Second, Plaintiff alleged that Defendant Scarff released a sealed police  
2 report to Nevada Attorney General Investigator Leesa Fazal ("Nevada AG  
3 Investigator" or "Defendant Fazal") in July of 2013. *See* "Complaint for  
4 Damages," at 15:15-19. Plaintiff alleged that Defendants knew that Plaintiff lived  
5 in California due to previous litigation with the City in 2010. However, the alleged  
6 harm occurred in 2013, and Plaintiff has not supported his allegation that the City  
7 knew that he was in California in 2013. Further, this is unrelated to the fact that the  
8 alleged release of the report took place in Nevada between Nevada agencies. The  
9 North Las Vegas Police Department allegedly produced the report to the Nevada  
10 AG Investigator. *See* "Complaint for Damages," at 16:6-7. Plaintiff has pled no  
11 facts to show that Defendant Scarff produced the report knowing that it would be  
12 used for a California hearing. Defendants Perez and Scarff had no contacts with  
13 California relating to this alleged release of information. *See* "Complaint for  
14 Damages," at 64:19-28.

15 Third, Plaintiff allegedly found out about the North Las Vegas Police  
16 Department report being produced on July 22, 2013, as it was allegedly included in  
17 Defendant Fazal's "confidential report" referenced in the Complaint. Plaintiff  
18 received an unredacted version of this "confidential report" on or about August 1,  
19 2013. *See* "Complaint for Damages," at 12:18-22. This was almost four years ago.

20 Although Plaintiff's allegations are muddled in the 87-pages of Plaintiff's  
21 stream of consciousness Complaint, it is clear from the factual allegations  
22 described above that Plaintiff's claims against Defendants Perez and Scarff must  
23 be dismissed with prejudice.

24  
25  
26  
27 <sup>2</sup> Plaintiff has failed to serve the City of North Las Vegas and failed to serve his  
28 full Complaint on Defendants Perez and Scarff who did not receive the exhibits to  
the complaint.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

III.

ARGUMENT

After a cursory review of Plaintiff's Complaint, the claims against Defendants Perez and Scarff should be dismissed in their entirety for four reasons: 1) this Court has no personal jurisdiction over Defendants, 2) venue is not proper, 3) Plaintiff failed to timely serve his Complaint, and 4) Plaintiff's claims are barred by the applicable statutes of limitations.

**A. This Court has no personal jurisdiction over Defendants Perez and Scarff.**

This Court should dismiss all claims against Defendants Perez and Scarff because it does not have personal jurisdiction. After a defendant files a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), the plaintiff bears the burden of proof to establish that the court has personal jurisdiction. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011). "Where, as here, the defendant's motion is based on written materials rather than an evidentiary hearing, 'the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.'" *Id.* (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir.2010)). When a defendant files a motion to dismiss the plaintiff's complaint, plaintiff must put forward some evidence supporting personal jurisdiction. *Scott v. Breeland*, 792 F.2d 925, 927 (9<sup>th</sup> Cir. 1986).

If there is no federal statute authorizing personal jurisdiction, then the court should apply the law of the state where it sits to determine whether it has personal jurisdiction. *CollegeSource*, 653 F.3d at 1073. "California's long-arm statute is 'coextensive with the outer limits of due process under the state and federal constitutions, as those limits have been defined by the United States Supreme Court,'" and so the court must consider the requirements of due process. *TV Ears*,

1 *Inc. v. SYK Grp., LLC*, No. 16CV867-GPC(WVG), 2016 WL 6248539, at \*3 (S.D.  
 2 Cal. Oct. 26, 2016) (slip copy) (citing *Republic Int'l Corp. v. Amco Eng'rs, Inc.*,  
 3 516 F.2d 161, 167 (9th Cir. 1976)) and (quoting *Threlkeld v. Tucker*, 496 F.2d  
 4 1101, 1103 (9th Cir. 1974)). In reviewing a personal jurisdiction challenge, the  
 5 California courts must determine whether the notions of fair play and substantial  
 6 justice under a due process analysis have been met. *Id.* "Personal jurisdiction can  
 7 be either 'general' or 'specific.'" *Id.* at \*3 (citing *Helicopteros Nacionales de*  
 8 *Colombia, S.A. v. Hall*, 466 U.S. 408, 415-16 (1984)).

9 In this case, there is no general or specific jurisdiction as Defendants Perez  
 10 and Scarff have no minimum contacts with California and have not availed  
 11 themselves of jurisdiction in California through the actions alleged by Plaintiff.  
 12 This reason is enough to warrant dismissal of all claims against Defendants Perez  
 13 and Scarff.

14 **1. This Court lacks general jurisdiction over Defendants Perez**  
 15 **and Scarff because neither of them are domiciled in California**  
 16 **and neither has continuous or systematic contacts with**  
 17 **California.**

18 General jurisdiction is established if the defendant is domiciled in the forum  
 19 state, or if the defendant's activities in the forum state are "substantial" or  
 20 "continuous and systematic." *TV Ears, Inc.*, 2016 WL 6248539, at \*3. To rise to  
 21 "substantial" or "continuous and systematic," the defendant's level of contacts with  
 22 the forum state must be high enough that it "approximate[s] physical presence."  
 23 *Lisa McConnell, Inc. v. Idearc, Inc.*, No. 09-CV-00061-IEG(AJB), 2010 WL  
 24 364172, at \*3 (S.D. Cal. Jan. 22, 2010) (quoting *Bancroft & Masters, Inc. v.*  
 25 *Augusta Nat. Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) holding modified by  
 26 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199 (9th  
 27 Cir. 2006)).

1 Defendants Perez and Scarff work for the North Las Vegas Police  
 2 Department in Nevada and are both domiciled in Nevada. Their work is in  
 3 Nevada, and they have no business in California. The records that were allegedly  
 4 released were from the North Las Vegas Police Department to the Nevada AG  
 5 Investigator. Defendants Perez and Scarff have no substantial or continuous or  
 6 systematic contacts with California.

7 Therefore, this Court lacks personal jurisdiction over Defendants Perez and  
 8 Scarff, and the case against them should be dismissed.

9 **2. This Court Lacks Specific Jurisdiction Over Defendants Perez**  
 10 **and Scarff Because Neither Had Contact With the Forum State**  
 11 **or Directed Activities Toward the Forum State.**

12 Specific jurisdiction can be established if the claim against a defendant  
 13 arises out of a defendant's contact with the forum state, and if the defendant  
 14 purposefully directed those activities in the forum state. *Weaver v. Johnson &*  
 15 *Johnson, Ethicon, Inc.*, No. 16CV00257GPCBGS, 2016 WL 1668749, at \*4 (S.D.  
 16 Cal. Apr. 27, 2016) (citing *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. at  
 17 414; *Walden v. Riore*, 134 S. Ct. 1115, 1121 (2014); and *Goodyear Dunlop Tires*  
 18 *Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 2851, 180 L. Ed.  
 19 2d 796 (U.S. 2011)). The Ninth Circuit uses a three factor test to determine  
 20 whether the court has specific jurisdiction over a defendant:

21 “ ‘(1) the defendant has performed some act or  
 22 consummated some transaction within the forum or  
 23 otherwise purposefully availed himself of the privileges  
 24 of conducting activities in the forum, (2) the claim arises  
 25 out of or results from the defendant's forum-related  
 26 activities, and (3) the exercise of jurisdiction is  
 27 reasonable.’ ”

28 *Silva v. Gonzales*, No. 3:13-CV-1587-CAB-KSC, 2014 WL 12663140, at \*7 (S.D.  
 Cal. May 23, 2014), *aff'd*, 667 F. App'x 967 (9th Cir. 2016) (quoting *Bancroft &*  
*Masters, Inc.*, 223 F.3d at 1086). The plaintiff has the burden of proving the first

1 two factors, and if he does, then the burden shifts to the defendant to give  
 2 compelling reasons why the exercise of jurisdiction is not reasonable and violates  
 3 due process. *Phillips v. Hernandez*, No. 12-CV-748-MMA WMC, 2012 WL  
 4 5185848, at \*4 (S.D. Cal. Oct. 18, 2012). “[I]f the plaintiff fails at the first step,  
 5 the jurisdictional inquiry ends and the case must be dismissed.” *Boschetto v.*  
 6 *Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008).

7  
 8 **i. Defendants Perez and Scarff did not Perform any Act**  
 9 **or Consummate Any Transaction Within the Forum**  
 10 **or Otherwise Purposefully Avail Themselves of the**  
 11 **Privileges of Conducting Activities in the Forum.**

12 Under the first prong of the test, the court must examine whether the  
 13 defendant’s actions were purposefully directed at the forum state. Specifically, “the  
 14 defendant must have (1) committed an intentional act, which was (2) expressly  
 15 aimed at the forum state, and (3) caused harm, the brunt of which is suffered and  
 16 which the defendant knows is likely to be suffered in the forum state.” *Bancroft &*  
*Masters, Inc.*, 223 F.3d at 1087.

17 While the act of producing a report is an intentional act, Defendant Scarff’s  
 18 alleged release of the report to the Nevada AG Investigator shows that the alleged  
 19 act does not avail Defendants Scarff and Perez of jurisdiction in California. The  
 20 “expressly aimed” portion of the test is met if the defendant engaged in conduct  
 21 targeted at a plaintiff the defendant knew to be a resident of the forum state.  
 22 *CollegeSource, Inc.*, 653 F.3d at 1077.

23 Plaintiff alleged in his Complaint that Defendants knew that Plaintiff lived in  
 24 California after previous litigation with Plaintiff in 2010. However, the harm to  
 25 Plaintiff in this case took place in 2013. Plaintiff has not pled or attached exhibits  
 26 to his Complaint to show that Defendants specifically knew where Plaintiff was in  
 27 2013. Defendants receive several requests for records daily. Defendants would  
 28

1 have no reason to believe that disclosing a report to a Nevada AG Investigator at  
 2 the Nevada Attorney General's Office, would cause harm in California to the  
 3 subject of a police report made in North Las Vegas, Nevada.

4 Therefore, Plaintiff has failed to meet the first prong of the specific  
 5 jurisdiction test. Lack of specific jurisdiction is sufficient grounds for dismissing  
 6 all claims against Defendants Perez and Scarff.

7 **ii. Defendants Have not Conducted Any Forum-Related**  
 8 **Activities, and the Exercise of Jurisdiction would be**  
 9 **Unreasonable.**

10 Plaintiff's claim against Defendants Perez and Scarff arises out of the  
 11 alleged release of information to Nevada AG Investigator Fazal. This is the only  
 12 extent to which Defendants are involved in this litigation. None of Defendants  
 13 alleged activities were conducted in the forum, directed at the forum, or meant to  
 14 affect the forum state in any way.

15 Further, if the Court found that Plaintiff meets the first two factors of the  
 16 specific jurisdiction test, jurisdiction would still be unreasonable and violate due  
 17 process. In determining whether jurisdiction would be unreasonable and violate  
 18 due process, the Ninth Circuit looks at seven factors:

- 19 (1) the extent of the defendants' purposeful injection into  
 20 the forum state's affairs; (2) the burden on the defendant  
 21 of defending in the forum; (3) the extent of the conflict  
 22 with the sovereignty of the defendant's state; (4) the  
 23 forum state's interest in adjudicating the dispute; (5) the  
 24 most efficient judicial resolution of the controversy; (6)  
 25 the importance of the forum to the plaintiff's interest in  
 26 convenient and effective relief; and (7) the existence of  
 27 an alternative forum.

28 *CollegeSource, Inc.*, 653 F.3d at 1079 (citing *Dole Food Co. v. Watts*, 303 F.3d  
 1104, 1114 (9th Cir. 2002)).

Under the first, third, fourth, fifth, sixth, and seventh factors, it is clear that  
 jurisdiction is unreasonable. Defendants' alleged actions were conducted within

1 Nevada between the Nevada AG Investigator and the North Las Vegas Police  
2 Department. There would be no indication that a transaction between these  
3 agencies would cause harm in another state. If Plaintiff's allegations are true, the  
4 harm caused to Plaintiff by Defendants Perez and Scarff was in Nevada and under  
5 Nevada law. Plaintiff's Complaint specifically references that the alleged actions  
6 by Defendant Scarff would violate Nevada law. This is a Nevada matter, having  
7 nothing to do with California. The additional claims against the other defendants  
8 go beyond the claims that Plaintiff has made against Defendants Perez and Scarff  
9 and could be litigated separately in California.

10 Under the second factor, this would cause a huge burden on Defendants  
11 because Defendants live and work in Nevada, conduct all of their work in Nevada,  
12 and do not have any work contacts in the forum. Defending litigation in California  
13 would burden the City financially.

14 Therefore, for the foregoing reasons, the United States District Court for the  
15 Southern District of California does not have personal jurisdiction over Defendants  
16 Perez and Scarff, and all claims against Defendants Perez and Scarff should be  
17 dismissed pursuant to Fed. R. Civ. P. 12(b)(2).

18 **B. Venue is Not Proper.**

19 Plaintiff's claims against Defendants Perez and Scarff should be dismissed  
20 pursuant to Fed. R. Civ. P. 12(b)(3) because venue is not appropriate in this  
21 District as Defendants Perez and Scarff do not live in California, did not have  
22 anything to do with California, even in the facts alleged by plaintiff, and this action  
23 could have been brought against them in Nevada. Plaintiff also bears the burden of  
24 establishing venue. *Silva*, No. 3:13-CV-1587-CAB-KSC, 2014 WL 12663140, at  
25 \*10. Federal law governs venue under 28 U.S.C. § 1391(b). Under this statute,  
26 venue is proper in:  
27  
28



1 (1) a judicial district in which any defendant resides, if all  
2 defendants are residents of the State in which the district  
3 is located;

4 (2) a judicial district in which a substantial part of the  
5 events or omissions giving rise to the claim occurred, or a  
6 substantial part of property that is the subject of the  
7 action is situated; or

8 (3) if there is no district in which an action may  
9 otherwise be brought as provided in this section, any  
10 judicial district in which any defendant is subject to the  
11 court's personal jurisdiction with respect to such action.

12 If the court finds that venue is improper, it may dismiss or transfer the action  
13 to the proper district pursuant to 28 U.S.C. § 1406(a).

14 The 28 U.S.C. § 1391(b) factors show that venue is not appropriate in this  
15 District. Defendants Perez and Scarff do not reside in California, and do not  
16 conduct any business in California. The alleged grievance that Plaintiff has against  
17 Defendants Perez and Scarff arises out of a transaction that occurred in Nevada,  
18 specifically that Defendant Scarff of the North Las Vegas Police Department  
19 allegedly released a sealed police report to the Nevada AG Investigator in 2013.

20 Even if the Court finds that it has personal jurisdiction over Defendants  
21 Perez and Scarff, this action against them could have been commenced in Nevada,  
22 and therefore, at the very least should be transferred to the United States District  
23 Court for the District of Nevada. However, based on the numerous deficiencies of  
24 Plaintiff's Complaint, this action should be dismissed in its entirety against  
25 Defendants Perez and Scarff.

### 26 **C. Plaintiff Failed to Timely Serve his Complaint.**

27 Plaintiff failed to timely serve his Complaint within the 90-day period  
28 required under Fed. R. Civ. P. 4(m), which is a sufficient legal basis to dismiss all  
claims against Defendants Perez and Scarff. Plaintiff commenced this action on  
July 22, 2016, as shown by the file stamp in the top right corner of his Complaint.

1 Thus, Plaintiff was required to serve Defendants Perez and Scarff by October 22,  
2 2016, but he failed to do so.

3 Pursuant to Fed. R. Civ. P. 4(m), once an action has been commenced, the  
4 plaintiff has 90 days to serve his complaint. If this deadline is not met, the  
5 defendant in the action can bring a motion to dismiss pursuant to Fed. R. Civ. P.  
6 12(b)(5) for insufficient service of process, which shifts the burden to the plaintiff  
7 to prove that Fed. R. Civ. P. 4(m) has been met either by timely service or by  
8 showing good cause as to why the timely service was not met. *Macpherson v.*  
9 *United States*, No. 3:15-CV-0769-BEN-AGS, 2017 WL 766722, at \*1 (S.D. Cal.  
10 Feb. 28, 2017). The Court has the discretion to determine whether the plaintiff has  
11 met the burden or whether to dismiss the action. *Id.*

12 Plaintiff has sealed this entire case, and Plaintiff has not provided any reason  
13 for this. Because the case is sealed, Defendants do not have access to any  
14 documentation that has been filed in the case other than what Plaintiff has  
15 provided. So far, Plaintiff has only provided his Complaint without any of the  
16 exhibits and waiver of service forms. Defendants are public officials, and Plaintiff  
17 should have been able to locate and timely serve Defendants.

18 In this case, the Complaint was filed on July 22, 2016. Plaintiff had 90 days  
19 from that date in which to serve Defendants, which would have been on or about  
20 October 22, 2016. Defendants were served on April 10, 2017, which was almost  
21 seven months late. Plaintiff did not provide any motion or documentation from the  
22 Court showing that he had extended the time in which to serve the Complaint.

23 Further, there is no good reason for Plaintiff's delay, because Plaintiff's  
24 attempt to effectuate service was to mail the Complaint to Defendants Perez and  
25 Scarff and request a waiver of service form. Plaintiff had no excuse to fail to locate  
26 public officials, and obviously had no trouble as the documents were ultimately  
27 mailed.



1 Therefore, Plaintiff's Complaint should be dismissed for insufficient service  
 2 of process because Plaintiff has delayed service of the Complaint upon Defendants  
 3 Perez and Scarff far past the 90-day deadline required under Fed. R. Civ. P. 4(m).

4 **D. Plaintiff's Claims are Barred by the Statute of Limitations.**

5 This Court should dismiss all of Plaintiff's claims against Defendants Perez  
 6 and Scarff because these claims are barred by the applicable statute of limitations.  
 7 Although Plaintiff's claims against Defendants Perez and Scarff are muddled in his  
 8 Complaint, his claims are barred by the statute of limitations. Plaintiff seems to  
 9 allege three claims against Defendant Scarff: 1) a civil rights violation under 42  
 10 U.S.C. § 1983, 2) invasion of privacy, and 3) negligence. Plaintiff appears to allege  
 11 two claims against Defendant Perez: 1) a civil rights violation under 42 U.S.C. §  
 12 1983 for failure "to supervise, train, or create policy and procedure forcing  
 13 compliance with Nevada law to prevent the disclosure of sealed police reports  
 14 absent a statutory obligation to produce such reports," and 2) negligence. See  
 15 "Complaint for Damages," at 17:15-17 and 76:7-10. Each of these claims was  
 16 brought after the expiration of the applicable statute of limitations.

17 A dismissal of a plaintiff's complaint is appropriate pursuant to Fed. R. Civ.  
 18 P. 12(b)(6) where the plaintiff's claims are barred by the statute of limitations.  
 19 *Vedachalam v. Tata Am. Int'l Corp.*, No. C 06-0963 VRW, 2010 WL 11484815, at  
 20 \*6 (N.D. Cal. Feb. 4, 2010). In *Bell Atlantic Corp. v. Twombly*, the United States  
 21 Supreme Court stated that a motion to dismiss should be granted when the  
 22 allegations in a complaint cannot raise a claim of entitlement to relief, and further,  
 23 that "this basic deficiency should ... be exposed at the point of minimum  
 24 expenditure of time and money by the parties and the court." 550 U.S. 544, 570,  
 25 127 S. Ct. 1955, 1974 (2007) (internal quotations omitted). In this case, a motion  
 26 to dismiss is appropriate because all of the claims against Defendants Perez and  
 27 Scarff are barred by the applicable statute of limitations.

1 Plaintiff's civil rights claims are barred by the two-year statute of  
2 limitations. "Actions predicated upon § 1983 are governed by the state statute of  
3 limitations for personal injury actions." *Wade v. Ratella*, 407 F. Supp. 2d 1196,  
4 1203 (S.D. Cal. 2005). Like in Nevada, the statute of limitations for a 42 U.S.C. §  
5 1983 civil rights claim in California is two years. *Id.* (citing *Maldonado v. Harris*,  
6 370 F.3d 945, 954 (9th Cir.2004) and Cal. Civ. Proc. § 335.1 (West Supp.2004)).  
7 A civil rights claim accrues when a party knows or has reason to know of the  
8 injury which is the basis of his or her claim. *Kimes v. Stone*, 84 F.3d 1121, 1128  
9 (9th Cir. 1996).

10 In this case, Plaintiff's claims arise from Defendant Scarff allegedly  
11 releasing a police report to the Nevada AG Investigator in July of 2013. Based on  
12 these facts, Plaintiff knew or had reason to know of the alleged injury on that date,  
13 and he should have filed suit by July of 2015 at the latest. Plaintiff's Complaint  
14 was filed on July 22, 2016, which is one year late.

15 Plaintiff's invasion of privacy and negligence claims are also barred by the  
16 two-year statute of limitations. The California Code of Civil Procedure § 335.1  
17 governs the statute of limitations for torts. Cal. Civ. Proc. Code § 335.1 (West).  
18 Just like the negligence claim, Plaintiff's invasion of privacy claim falls under §  
19 335.1 because it is a personal injury claim. *Mireskandari v. Daily Mail & Gen.*  
20 *Trust PLC*, No. CV1202943MMMSSX, 2013 WL 12114762, at \*15 (C.D. Cal.  
21 Oct. 8, 2013).

22 Again, Plaintiff's claims against Defendants Perez and Scarff arise from  
23 Defendant Scarff allegedly releasing a police report to the Nevada AG Investigator  
24 in July of 2013. Based on these facts, Plaintiff knew or had reason to know of the  
25 alleged injury on that date, and he should have filed suit by July of 2015 at the  
26 latest. Plaintiff's Complaint was filed on July 22, 2016, which is one year late.

1 All of Plaintiff's claims against Defendants Perez and Scarff were filed more  
2 than one year after the statute of limitations lapsed; consequently, all of Plaintiff's  
3 claims against Defendants Perez and Scarff should be dismissed in their entirety  
4 with prejudice.

5 IV.

6 CONCLUSION

7 For the foregoing reasons, this Court should dismiss Plaintiffs' Complaint  
8 against Defendants Perez and Scarff in its entirety with prejudice.

9 DATED this 7<sup>th</sup> day of June, 2017.

10 NORTH LAS VEGAS CITY ATTORNEY

11 By Micaela Moore

12 Micaela C. Rustia Moore  
13 *Attorneys for Defendants*  
14 *Alexander Perez and Mary D. Scarff*